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FIRST APPEAL NOS. 6586/95 TO 6605/95

Date of Decision : 13.03.1996

For Approval & Signature

THE HON'BLE MR. JUSTICE N.J.PANDYA

AND

THE HON'BLE MR. JUSTICE A.R. DAVE

1. Whether reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ?

5. Whether it is to be circulated to th...

Mr.M.R.Anand learned G.P. with Mr.A.J.Desai, learned AGP for the Appellants

Mr. A.J.Patel, learned Advocate for the Respondents.

CORAM : N.J. PANDYA & A.R DAVE, JJ

13.03.1996

ORAL COMMON JUDGMENT ; [ Per : Pandya, J ]

Admit. With the consent of the parties, the matter is taken up for final hearing.

Record & Proceedings were called for. With the consent of the parties, the matter is now being heard and disposed of finally.

All these appeals arise out of common judgment given by the learned 3rd Jt. District Judge, Ahmedabad (Rural) at Mirzapur whereby she disposed of Land Acq. Case No. 953/87 treating the same as main along with Land Acq. Case Nos. 932/87 to 952/87 and 954/87.

The learned Judge by her judgment dated 5.4.1995, was dealing with acquisition proceedings initiated in Sanand Taluka area of District Ahmedabad by sec.4 Notification dated 18.2.1971. This date is the date of publication thereof. This was followed by sec.6 notification dated 16.2.1974 and Land Acq. Officer was pleased to give his award on 9.8.1986. The claimants had claimed Rs. 50/ per sq.mt. while the awarded claim was maximum up to Rs.4.50 per sq.mt. The learned Judge, after recording evidence and for the reasons stated in the judgment, had given additional compensation of Rs. 26.50 per sq.mt. Thus, the market price fixed by the learned Judge comes to Rs. 31.00 per sq.mt. The project was Kadi- Sanand- Bavla Road.

The claimants had gone before the Reference Court with two different sets of evidence for getting enhanced compensation. One is the sale instances and the other one is that of yield method. So far as the sale instances are concerned, they are two i.e. exh.36 & 37 respectively dated 13.6.1985 and 20.12.1984. Of the two, first one relates to village Sanand itself. That will necessarily be important because the lands acquired are situated at the outskirts of that village. Exh.37 is of village Nidharad.

However, we agree with the learned AGP Mr. Anand that these documents should not be looked into because they are exhibited after almost 14 years of publication of notification under sec. 4 of the Act. The publication of the said notification as noted earlier is made on 18.2.1971. They are of remote past and, therefore, are of no assistance. They cannot be said to be comparable instances at all.

We have, therefore, to fall back upon the yield method and there crop to be considered is that of tobacco, cotton, bajari. Nodoubt, the claimants have tried to make out a case that they were taking two crops in a year, the documents as can be seen from the record are to the contrary.

Village forms 7/12 and there extracts are produced at exh. 16 to 34. There is clear evidence available from this material showing that only one crop was taken and that too the lands are shown to be unirrigated.

In most of lands, crop taken is that of tobacco. In only three lands, Juvar is shown to be cultivated and in one, cotton is grown.

The solitary witness examined on behalf of the claimant in his deposition exh.38 has come out with assertion that they used to get 30 mounds of tobacco per vigha and its market price was Rs. 150/ to 170/ per mound. He claimed yield of cotton to be of 40 mounds per vigha having price range of Rs. 45/ to 50/ per mound. For Juvar, he has indicated yield to be of 35 to 40 mounds and price at Rs. 40/ per mound. He has not deposed at to the yield of Bajari crop.

The claimants have produced along with list exh.15, mark 20, 21, 22 and 23 respectively the evidence as to prevailing price in the year 1971 of tobacco, cotton, wheat, juvar, bajari etc. In the deposition of the said witness exh.38, these documents are referred with respective mark numbers, but they are not exhibited.

This now has been taken care of by the learned G.P. who has put his endorsement below exh.15 admitting the correctness of the document and saying that it be read in evidence and be exhibited accordingly. They are ordered to be exhibited which will ofcourse be during the pendency of the appeal and exhibit numbers to be given after last exhibit i.e. exh.65 which is given to the original decree. They will accordingly now be exhibited as exh. 66 to 69.

Allowing exaggeration that is to be found in the oral testimony of the claimant in Land Acq.Cases, but surely with regard to yield when witness simultaneously admits non-keeping of any documentary evidence, if we proceed to calculate the price of the tobacco on the basis of evidence now available on record i.e. exh.66 & 67, it becomes clear that yield per vigha is about 25 mounds and price Rs. 4.20 per kg. and per mound as deposed by the witness would be Rs. 140/. This gives yield per vigha to be Rs. 3500/ and from that amount, after deducting Rs. 1200/ towards expenses, then the balance left out would be Rs.2300/.

The purchase to be given is 10 and for working out price per sq.mt., conversion ratio of Rs. 2300 has to be applied and accordingly, price per sq.mt. works out to Rs. 10/.

The fields which were growing tobacco, the market price of that of the lands acquired to be awarded at the rate of Rs.10/ per sq.mt. and of that whatever amount that has been awarded by the Land Acq. Officer, will have to be deducted and balance amount towards additional compensation will have to be awarded to those claimants.

So far as the claimants of Land Acq. Case No. 937/87 is concerned, as per 7/12 extract at exh.18, cotton was grown for which yield method worked out on the basis of evidence exh.66 details of APMC, Sanand giving price for the year 1972-73 for cotton is Rs. 45/ for 20 kg. According to the aforesaid witness exh.38, yield per vigha would work out to 35 mounds and applying said price of Rs.45/ for 20 kg. which is equal to one mound yield per vigha would come to Rs. 1570/ and from that Rs. 500/ are deducted towards expenses and applying said conversion ratio, price per sq.mt. works out to Rs. 4.65. Land Acq. Officer has awarded Rs. 3.50 per sq.mt. Therefore, the additional compensation to these claimants will be Rs. 1.50 per sq.mt. because said value per sq.mt. viz. Rs. 4.65 is rounded off to Rs. 5.00 per sq.mt.

Claimants of Land Acq. Case Nos. 948/87, 952/87 and 950/87, in their fields, had grown Juvar. So far as the claimant of last case is concerned, it is to be noted that in the year 1971-72, land is shown to be fellow land. However, in the subsequent year i.e. 1972-72, it is shown that said claimant had also grown Juvar in that field. Therefore, this case is taken with the other two where Juvar was the crop in the year 1971-72.

Referring to the said evidence of market committee as well as deposition of said solitary witness exh. 38, the position worked out is that 40 mounds x price of Rs. 28/ per mound and after deducting as stated earlier, will lead to price of Rs. 3.50 per sq.mt. to be the market price after applying said conversion ratio of Rs. 2300/ for the purpose.

The Land Acq. Officer has awarded Rs. 1.50 per sq.mt. to the claimant of Land Acq. Case No. 948/87, Rs.0.50 ps. and Rs. 1.00 to claimants of Land Acq. Case No. 950/87 and Rs.0.50 ps. to claimants of Land Acq. Case No.952/87. This amount is to be deducted from the amount as stated above to be the market price and balance would be the additional amount payable to them.

These appeals, therefore, stand allowed accordingly so far as fixing market price of the lands under acquisition is concerned. The rest of the award of the Lower Court as to solatium and interest etc. shall remain as it is. The amount awarded to the claimants shall be deposited in the Trial Court within a period of 8 weeks from today and on it being deposited, the same shall be paid to the claimants on proper identification. This direction is to be carried out if the amount is not deposited so far or is not paid.

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